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STATE OF TENNESSEE
BEFORE THE TENNESSEE REGULATORY AUTHORITY

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In the Matter of:

GENERIC DOCKET ADDRESSING
RURAL UNIVERSAL SERVICE

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T.R.A. DOCKET ROOM

Docket No. 00-00523

JOINT COMMENTS OF CMRS CARRIERS

Cellco Partnership, doing business as Verizon Wireless ("Verizon Wireless"), Chattanooga MSA Limited Partnership, BellSouth Personal Communications, LLC and BellSouth Mobility LLC, doing business as Cingular Wireless ("Cingular")¹, and Sprint Spectrum, L.P., doing business as Sprint PCS, and AT&T Wireless PCS, LLC, doing business as AT&T Wireless², (hereinafter collectively "the CMRS Carriers") hereby submit their joint comments in the above-captioned proceeding. On April 22, 2003, Director Ron Jones, acting as Pre-Hearing Officer of the Tennessee Regulatory Authority ("Authority"), held a Status Conference to discuss the April 2, 2003 letter filed by BellSouth Telecommunications, Inc. ("BellSouth"), the April 3, 2002 Petition for Emergency Relief and Request for Standstill Order (the "Petition") filed by the Tennessee Rural Independent Coalition ("RLECs"), BellSouth's Response to the Petition and Counterclaim, and the impact of such proceeding on providers of Commercial Mobile

¹ Cingular's comments are being made subject to the grant of its Petition for Leave to Intervene filed with the Tennessee Regulatory Authority on April 24, 2003.

² AT&T Wireless' comments are being made subject to the grant of its Petition for Leave to Intervene filed simultaneously with this Joint Comments of CMRS Carriers.

Radio Service ("CMRS"). At the conclusion of the Status Conference, Director Jones instructed any party wishing to file comments to do so by April 25, 2003.

The CMRS Carriers respect the desire of the Authority not to receive duplicative comments. Accordingly, the CMRS Carriers have endeavored to incorporate each company's comments into this single joint filing. We appreciate the opportunity to submit these comments and look forward to working with the Authority in reaching an expeditious and fair resolution of these issues, which are of paramount importance to the CMRS Carriers, to other carriers, and to the citizens of Tennessee. Toward that end, the CMRS Carriers are eager to participate in joint negotiations supervised by the Authority, which serve to bring all the interested parties together to resolve these important issues.

I. The CMRS Carriers Seek To Maximize Efficient Interconnection

1. The CMRS Carriers are licensed by the Federal Communications Commission ("FCC") to provide CMRS to the public throughout several states including the State of Tennessee.
2. To provide telecommunications services between subscribers of local exchange carriers ("LECs") and CMRS, the CMRS Carriers interconnect their respective networks directly and indirectly in accordance with applicable federal law.
3. The CMRS Carriers currently exchange traffic with RLECs through the tandem facilities of BellSouth. This tandem level interconnection, also known as "indirect" interconnection, is efficient because it permits individual CMRS Carriers to exchange traffic with all incumbent local exchange carriers

(ILECs), competitive local exchange carriers (CLECs), and other CMRS Carriers that are also connected to BellSouth's tandems.

4. Once a threshold amount of traffic is exchanged between an individual CMRS Carrier and another carrier, direct interconnection arrangements with the other carrier may be more efficient than indirect arrangements. The CMRS Carriers typically seek "direct" interconnection arrangements when traffic volumes between the respective carriers and another carrier reach these levels.³
5. The CMRS Carriers seek to obtain direct interconnection only when it is efficient because such decisions must be economically justified. Economic support for such decision is critical given the highly competitive nature of CMRS. In addition, there are a finite number of direct interconnection facilities that may be implemented at a single mobile switching center. Indirect interconnection helps avoid exhaustion of trunk ports where the volume of inter-carrier traffic is low.
6. Since the passage of the Telecommunications Act of 1996 (the "Act"), the CMRS Carriers have negotiated interconnection agreements with BellSouth that provide for BellSouth to "transit" traffic exchanged between individual CMRS Carriers and third party carriers that are also interconnected with BellSouth. Throughout BellSouth's territory in Tennessee, if BellSouth is not interconnected with another ILEC, CLEC, or CMRS Carrier, indirect interconnection will not occur.

³ The CMRS Carriers typically seek direct connection when traffic volumes reach the T-1 level, which occurs when carriers exchange approximately 500,000 minutes of usage on a monthly basis. The CMRS

II. FCC Rules Govern The Exchange Of LEC-CMRS IntraMTA Traffic, Not The Primary Carrier Plan

1. There is no dispute that the CMRS Carriers and RLECs have exchanged traffic indirectly for many years. The trunks in place have carried RLEC-CMRS traffic since the FCC first ordered all LECs to interconnect with cellular licensees.⁴
2. Congress specifically permitted carriers to interconnect indirectly when it enacted the Act, 47 U.S.C. § 251(a)(1), and the FCC has recognized the legitimacy of indirect interconnection. The FCC has noted that:

Alternatively, in rural settings, wireless carriers can elect to deliver CMRS-originated calls to a large ILEC (typically a Regional Bell Operating Company [RBOC]) for routing to the rural LEC carrier. The large ILEC and rural LEC are interconnected on a bill-and-keep basis for the exchange of wireline calls. Once the CMRS-originated traffic is switched by the ILEC tandem, CMRS-originated traffic travels on the same trunk as wireline calls to the ILEC.

In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice Of Proposed Rulemaking, CC Docket No. 01-92, ¶ 92 fn.148 (rel. Apr. 27, 2001). FCC rule 47 C.F.R. § 20.11(a) requires all local exchange carriers “to provide the type of interconnection reasonably requested by a mobile licensee or carrier” unless such “interconnection is not technically feasible or

Carriers propose to interconnect indirectly with the ICOs where traffic levels between particular end offices do not meet the T-1 level volume threshold.

⁴ See *The Need To Promote Competition And Efficient Use Of Spectrum For Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd 2910, 2913 (April 30, 1987). In a later order, the FCC extended interconnection obligations to all LEC-CMRS traffic. See *Implementation of Sections 3(n) and 332 of the*

economically reasonable.” Section 20.11(b) requires both CMRS providers and LECs to enter mutual compensation arrangements.⁵

3. At the Status Conference before this Authority, representatives of the RLECs asserted that traffic indirectly interconnected through BellSouth to the RLECs was not subject to the mutual compensation requirements of the FCC’s rules, but was instead governed by a Primary Carrier Plan (“PCP”) and that such traffic was access traffic subject to access rates.
4. The PCP is a landline agreement setting forth the rates, terms, and conditions of the exchange of intraLATA toll traffic between the carriers that subscribe to that agreement. None of the CMRS Carriers are parties to the PCP. Moreover, the CMRS Carriers do not exchange intraLATA toll traffic with the RLECs or BellSouth, and the rates, terms, and conditions contained in the PCP are therefore not binding on the CMRS Carriers.
5. The FCC has expressly applied its reciprocal compensation rules to the exchange of traffic between CMRS providers and wireline carriers. In so ruling, the FCC has specified that reciprocal compensation applies to the exchange of all “Telecommunications Traffic,” which for purposes of traffic between a LEC and CMRS provider is all traffic that originates and terminates

Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 at ¶230-232 (1994) (“Second CMRS Interconnection Order”).

⁵ *Id.* at ¶ 232. In addressing the costs of LEC- CMRS interconnection, the FCC ordered, “mutual compensation shall apply, under which LECs shall compensate CMRS providers for the reasonable costs incurred by such providers in terminating traffic that originates on the LECs facilities.” Therefore, even prior to the 1996 Act, the FCC required that rates for mutual compensation would be based on the costs of the services. The provisions of FCC rule 20.11 were later amended to include the pro-competitive obligations of Sections 251 and 252 of the 1996 Act.

within the same Major Trading Area ("MTA").⁶ It is therefore the end- to-end nature of the intraMTA call and not the transmission facilities used to transport the traffic, that determines whether reciprocal compensation applies.

6. Despite the fact that access rates should not have applied to intraMTA traffic, the CMRS Carriers historically have paid termination charges at access rates to BellSouth, which BellSouth then paid to the RLECs with which the individual CMRS Carriers exchanged traffic. With the implementation of "meet point" billing, BellSouth will provide wireless providers and the RLECs billing records that will permit the carriers to bill each other directly for traffic exchanged through BellSouth's tandems. The various CMRS Carriers are in differing stages of implementing meet point billing. Verizon Wireless and BellSouth are scheduled to implement meet point billing on or about May 23, 2003; Cingular and BellSouth have already implemented meet point billing; and Sprint PCS and BellSouth have already implemented meet point billing. To date, AT&T Wireless has not implemented meet point billing, but plans to do so are forthcoming. The CMRS Carriers, filing jointly herein, therefore seek to negotiate and obtain reciprocal compensation agreements with the RLECs.

III. RLEC's Legal Positions Are Inconsistent With Sections 251 And 252 Of The Act

1. At the Status Conference before the Authority, RLEC representatives admitted that the access rates that RLEC members are charging for intraMTA traffic

⁶ See 47 C.F.R. § 51.701(b)(2). This rule is commonly referred to by the CMRS industry as the "MTA Rule".

exchanged between RLEC members and the CMRS Carriers are in excess of the requirements of Sections 251 and 252 of the Act. We appreciate that acknowledgement. The CMRS Carriers would like to negotiate reciprocal compensation agreements with RLEC members and other LECs that provide for cost-based reciprocal compensation rates using billing data available from BellSouth. Pursuant to Sections 251(b)(5) and 251(c) of the Act, reciprocal compensation rates for traffic jurisdictionally defined as subject to reciprocal compensation should be based on forward looking costs, regardless of whether traffic is exchanged directly or indirectly.

2. The RLECs assert that the CMRS Carriers should not be permitted to recover reciprocal compensation for LEC-CMRS traffic that transits BellSouth's network through its tandems. The RLECs base their argument on the premise that BellSouth has wrongly placed CMRS traffic on trunking facilities shared with the RLECs in violation of the PCP agreement. The RLECs argue that under the rates, terms, and conditions of the PCP, only intraLATA toll traffic between incumbent local exchange carriers may be transported using these trunks. As demonstrated above, regardless of how BellSouth transports LEC-CMRS traffic, the FCC's MTA rule⁷ still applies to traffic that originates and terminates within the same MTA to be subject to reciprocal compensation and not access charges.
3. Not surprisingly, the RLECs would prefer the Authority to order BellSouth to continue compensating the RLECs at access rates for CMRS- LEC traffic

instead of reciprocal compensation rates that are cost-based. If the Authority agrees, by forcing BellSouth to pay termination rates at access levels, the RLECs would be able to collect rates that are higher than cost for traffic that should be subject to cost-based reciprocal compensation rates. In addition, until this proceeding is resolved and until the CMRS Carriers are able to enter interconnection and reciprocal compensation agreements with the RLEC companies, the RLECs would continue to avoid paying reciprocal compensation to the CMRS Carriers for land-originated intraMTA traffic. For these reasons, the RLECs would have no incentive to negotiate fair interconnection agreements with the CMRS Carriers. The Authority should clearly reject this approach. A ruling by the Authority in this proceeding that sustains such an economic arbitrage opportunity for the RLECs would undermine the ability of CMRS carriers to provide competitive telecommunications services in the areas served by the RLECs. Indeed the fact that virtually no interconnection agreements covering indirect traffic between individual CMRS Carriers and the RLECs have been reached speaks volumes as to the unwillingness of the RLECs to depart from the lucrative access rate world which they currently enjoy.

4. Given the likely differences between the parties' legal positions in this proceeding, the CMRS Carriers anticipate that it will be necessary to obtain guidance from the Authority on a number of issues, either through the

⁷ *Supra* at Note 6.

arbitration process or in advance of that process. The Authority should order the following:

- a. The RLECs and other similarly situated rural incumbents LECs should be required to negotiate reciprocal compensation and interconnection agreements with the CMRS Carriers for direct and indirect interconnection in accordance with Sections 251 and 252 of the Act.
- b. The RLECs or other similarly situated carriers should be required to submit to Section 252 arbitration if the parties are unable to reach agreement within 135 to 160 days. The Authority should establish a date upon which collective negotiations are deemed to have commenced. During the Status Conference, a BellSouth representative suggested the issues could be resolved within 90 days. Certainly the CMRS Carriers are hopeful that is the case, but in the event negotiations are unsuccessful there should not be further delays in reaching a final resolution. Therefore, the CMRS Carriers respectfully request that the Authority establish the date negotiations begin as the date of receipt of a bona fide request for interconnection under Section 251(f)(1)(B) for opening of the 135-160 day window on a collective basis.
- c. The Authority should order carriers to negotiate collectively to maximize the efficient use of the CMRS Carriers and RLEC resources, including, to the extent practical, the joint development by the CMRS Carriers of proposals to present for negotiation with the RLECs, the RLECs jointly developing proposals to negotiate with the CMRS Carriers, the results of

such negotiations to be presented to the Authority for review and possible approval, or, in the alternative, to frame any of the unresolved issues for efficient resolution through arbitration.

IV. Separate CMRS-LEC Interconnection Trunk Groups Would Be Inefficient and Unnecessary

1. Although during the Status Conference there was no specific discussion about separate CMRS-LEC interconnection trunk groups, in other states such as Kentucky the RLECs have made this proposal. This trunk group would ostensibly replace the function of the current trunk group. The RLECs have suggested that this proposal would allow their members to move to some rate lower than access rates, which would also apply to traffic routed directly. The RLECs have also proposed that BellSouth should continue to bill and collect termination charges on behalf of RLECs and similarly situated rural carriers.
2. Forcing CMRS traffic onto separate trunk groups is unnecessary and contrary to Federal law.⁸ Once the carriers move to meet point billing, BellSouth's CABS billing system can measure this traffic, so there is not a need for a separate trunk group from a technical perspective. Creation of a separate trunk group would also raise the indirect trunking costs of CMRS carriers. In Kentucky, this RLEC proposal did not specify which parties would pay for the construction and transport of the CMRS trunks, nor did it address how RLECs

⁸ In the Second CMRS Interconnection Order, the FCC ruled that "the LEC shall not have authority to deny to a CMRS providers any form of interconnection arrangement that the LEC makes available to any other carrier or customer" except to the extent that such arrangement "is not technically feasible or economically reasonable". Second CMRS Interconnection Order at ¶ 230.

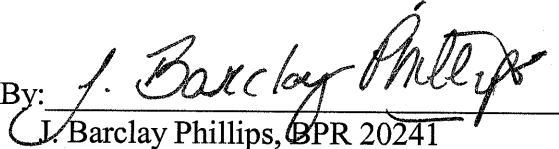
would transport and compensate CMRS providers for traffic originated by the RLECs in the land-to-mobile direction. Pursuant to Sections 251(b)(5) of the Act, such traffic should also be subject to reciprocal compensation.

3. In any event, even if the separate trunk proposal settled certain issues, which it would not, it would not obviate the need for the parties to settle all of the remaining issues that must be addressed in a typical reciprocal compensation and interconnection agreement. Because any separate trunking proposal would not resolve any of the issues in this proceeding, and because it could not displace the Act's requirement that carriers negotiate reciprocal compensation and interconnection agreements, the Authority should not consider any separate trunking proposal. Further, no solution should be considered which would increase the cost of transit.

Conclusion

With filing of these Joint comments, the CMRS Carriers wish to espouse their willingness to negotiate mutually workable solutions for the parties involved herein that maximize efficient and cost effective arrangements between such parties.

Respectfully submitted on behalf of
CMRS Carriers,

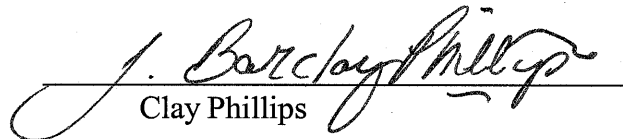
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

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